

ENFORCEABILITY OF A LETTER OF OFFER

26 JANUARY 2021



Contract

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CLIENT ALERT: ENFORCEABILITY OF A LETTER OF OFFER



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LETTER OF OFFER: DOES IT CREATE A BINDING EFFECT?

A letter of offer, sometimes referred to as a letter of intent is often used in a wide array of business contexts and is a common occurrence. However, can this letter be construed as an enforceable contract?

A party that has signed a letter of intent may be legally bound to honor it depending on how the letter is drafted. In a day-to-day business transaction, a letter of intent normally contains a provision stating it is non-binding. Even if such language is not included, it is possible a court would rule that the letter is only an expression of intent.

As a formal document signed by parties intended to enter into a contractual relationship before the formalisation of a legally binding agreement, this also demonstrates the flaw that it is neither an offer nor a contract.

With that being said, how does courts interpret letters of offer?

The High Court in the case of *Syarikat Pertanian Emmal Sdn Bhd v Tractors Malaysia (1982) Sdn Bhd [2009] 4 MLJ 223* provided the rationales on the deciding factors.

Brief facts:

The defendant (Vendor) in this case had accepted the plaintiff (Purchaser)'s offer to purchase three parcels of land. An earnest deposit was requested. Consequently, the plaintiff then issued a letter of intent which contained terms and conditions of the sale and purchase of the lands and a cheque for the earnest deposit had likewise been enclosed. Dispute arose when the defendant intended to withdraw the accepted offer and the court was given a question as to whether a binding contract was formed.

Decision:

The High Court in this case held in favour of the plaintiff, stating that a contractual relationship had indeed been entered into and hence, allowing specific performance of the agreement with costs. This decision was due to the following reasons:

(i) Essential terms of the contract had been successfully identified.

The court interpreted the case by looking into the pre- contract documents. The contents of the duly signed letter of acceptance to the offer which included all the material terms were sufficient to form a contract. An open contract was formed as the parties to the transaction, the price, the property and the essential terms were all sufficiently identified.

(ii) Subsequent conduct of the parties upon the acceptance of the offer proved consideration.

The court was convinced that there was an existing intention to enter into a contractual relationship between the parties. The intention of forming a contract was evidenced by the payment of the earnest deposit by the plaintiff as requested by the defendant in their letter of acceptance. The subsequent conduct of the parties clearly revealed that both parties had intention to enter into a binding agreement.

(iii) The acceptance to the offer was not subject to any other terms or conditions.

'Subject to Contract'

In certain cases, a letter of offer may contain a 'subject to contract' clause which explicitly states the letter is subject to a formal contract being further concluded. In other words, it is merely construing an understanding to enter into a contract.

The Federal Court in *Charles Grenier Sdn Bhd v Lau Wing Hong* [1997] 1 CLJ 625 first recognised that a contract to enter into a contract does not have a binding effect.

However, having viewed the correspondences exchanged between the parties to see what the parties intended, the court held that despite the phrase "subject to sales and purchase agreement" was used, the phrase merely indicated that the parties wanted to formalise an agreement which they have already entered into and hence an agreement was already in existence although a formal agreement was to be made later. It was further stated that the clause in the pre-contract document must be read in the context of the correspondence, the object or aim of the transaction and the intention of the parties.

Once again, it is important to stress that the factors to be examined are the contents of the letter of offer and the conduct of the parties proving their intention.

Conclusion:

An agreement to enter into a contract is not yet a binding contract. It is not enforceable when most terms are not finalised with room for further negotiations as the law does not recognise a contract to enter into another contract.

However, 'subject to contract', 'subject to sale and purchase agreement' or any wordings similar in nature will not automatically point to an intention that no contract will come into existence until a formal contract is concluded.

In circumstances where material terms have been included in the letter of offer with conduct or action from parties proving their intention to enter into a contract may be deemed sufficient and binding despite the lack of mere formality.

A party should always examine the letter of offer prior to execution as there may be significant financial obligations and impacts that could derive from it. If a party does not intend to be bound by the letter and does not intend to word it as an enforceable contract, he or she shall ensure the language of the letter reflects the same intention.



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